

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 17th OF DECEMBER, 2025

WRIT APPEAL No. 2559/2025

VICKRAMH KKALMADY

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Ms. Smrati Sharma and Ms. Krati Sachdev – Advocates for appellant.

Shri Vivek Khedkar – Senior Advocate/Additional Advocate General with Shri Ravindra Dixit – Govt. Advocate for respondents No.1, 2 and 3/State.

Shri Vishal Tripathi - Advocate for respondents No.4 and 5.

Shri Prashant Sharma, Shri M.K.Sharma and Shri Divakar Vyas - Advocates for respondent No.6.

J U D G M E N T

Per: Justice Anand Pathak

The present Writ Appeal under Section 2 (1) of The Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 is preferred by the appellant (hereinafter shall be referred as 'the petitioner') being aggrieved by the order dated 30th April 2025 passed by the learned Writ Court in W.P.No.13399 of 2025, whereby the petition filed by the petitioner has been dismissed.

2. Precisely stated, facts of the case are that the petitioner is biological

father of a minor child (Om V. Kalmady), who is presently studying in Little Angles High School, Gwalior (Respondents No.4 and 5 herein). Earlier his son was studying at Mallya Aditi International School, Yelahanka, Bangaluru. Prior to it, the child was enrolled at Neev Early Years – Queens Road School, Bangaluru for his kindergarten education. In both the institutions at Bangaluru, petitioner's name was duly recorded as father in all school records. Identity of minor child and the petitioner's status as biological father is evidenced through different documents filed in this regard by the petitioner.

3. Due to matrimonial dispute, the petitioner and his wife are currently involved in various legal proceedings including custody matter. As per different orders passed by the High Court of Karnataka, visiting rights were given to the petitioner and he is regularly paying the child's school fees.

4. It appears that despite compliance, as alleged, the mother of the child has not allowed the petitioner meaningful access or contact with the child. Petitioner approached the respondents on multiple occasions requesting that his name be included in the school record of the child as father of the child and to give access to the child's academic records and school app login credentials. However, these requests were refused. Therefore, petition was preferred but same got dismissed on the point of maintainability.

5. It is the submission of learned counsel appearing for the petitioner that petition is maintainable because school is performing the public functions and is governed by **The Right of Children to Free and Compulsory Education**

Act, 2009 (hereinafter shall be referred to as '*the RTE Act*'). It's different provisions provide for maintenance of record and compulsory lawful admission of students till age of 14 years. When school did not respond to the notice, then on request of the petitioner, respondents No.2 and 3 (State authorities) issued directions to the school but the school did not consider the said directions. Therefore, the relief is under public law remedy. Ergo, writ petition is maintainable.

6. It is further submitted that arbitrary and discriminatory action of respondents violates the right to education and right to live with dignity. Non inclusion of name of petitioner infringes fundamental right to parenthood because he is biological father of his son, who is studying in respondent No.6 school. Recognized parental rights of a biological father are being infringed by the inaction of the respondents. Petitioner is denied access to minor child's school login, report card and academic progress without being afforded any hearing or lawful justification.

7. It is submitted that school failed to comply statutory provisions under RTE Act. Similarly, right to participate in upbringing and education of his own child is denied. It is in the best interest of the child that he must contain record of father (name of father) as well as mother and father must get access to all his educational progress. Marriage is not dissolved yet, even dissolution of marriage does not extinguish parental status of a father. Thus, he prayed for setting aside of writ court's order and grant of relief as sought for.

8. Counsel for the respondents/State opposed the prayer and prayed for dismissal of the petition on the ground of maintainability. However, it is submitted that respondents No.2 & 3 issued directions to school for correction of record.

9. Counsel for respondent No.6 opposed the prayer on the ground that if the petitioner is given access, then he may cause embarrassment to the child because he is in habit of using filthy and abusive language. Same may reflect over the progress of the child. Not only this, but the petitioner may try to influence the child in negative manner. Counsel for the respondent No.6 prayed for dismissal of the appeal.

10. Counsel for the respondents No.4 and 5 (Little Angels Junior School) fairly submits that they have no objection if record is corrected and if suitable direction is issued accordingly.

11. Heard learned counsel for the parties at length and perused the documents/record appended thereto.

12. This is the case where biological father seeks insertion of his name (as father) in the academic record of his own son.

13. Before proceeding further, the objection raised by the respondent/State regarding maintainability of petition is to be addressed. Learned Writ Court dismissed the writ petition on the ground of maintainability of petition based upon the judgment of the Apex Court in the case of **St. Mary's Education Society and Another Vs. Rajendra Prasad Bhargava and Others - (2023)**

4 SCC 498.

14. In the present case, types of reliefs claimed assumes importance.

Petitioner sought following reliefs:-

A. Issue an appropriate writ, order or direction in the nature of mandamus directing Respondent No.4 & 5 – Little Angels Junior School, Gwalior, to :

i. Update and reflect the name of the petitioner as the father of the child in the school records, including admission register, report cards, school database, mobile application, and all other relevant academic documents;

ii. Provide access to the petitioner for all academic and administrative records of his child, including login credentials for the school app/portal, copies of report cards, notices and weapon fee receipts;

iii. Strictly comply with the directions issued by Respondents No.2 and 3 in letters dated 08.11.2024 and 11.12.2024 (Annexures P/7 and P/9), and ensure necessary record updation forthwith;

B. Direct the Respondents No.1 to 3 to monitor and ensure that the directions issued under the RTE Act are implemented in letter and spirit and to initiate necessary action against Respondent No.4 for non-compliance, if required;

C. Pass any other or further orders as this Hon'ble Court may deem just and proper in the interest of justice, equity and good conscience.

15. Petitioner in his pleadings and counsel for the petitioner in her submissions relied upon the RTE Act, which is enacted to provide for free and compulsory education to all children of the age of 6 to 14 years. Admittedly, son of the petitioner is 8-9 years (Date of birth of his son is 08.06.2017).

Therefore, he falls under the purview of RTE Act. Admittedly petitioner is

biological father of his son (Om V. Kalmady).

16. State Government is the “appropriate Government” in relation to a school established. Section 2 (n) of the RTE Act defines 'school', which includes any school established, owned or controlled by the Central Government/State Government/local authority or aided school receiving grant from the appropriate Government or a school belonging to a specified category and an unaided school not receiving any kind of aid or grant. Respondent no.6 school falls under “an unaided school” as per Section 2 (n) (iv) of RTE Act.

17. Sections 8 and 9 of the RTE Act cast upon appropriate Government/ local authority certain duties to perform. Section 9 prescribes duties of local authority. Said duties are as under :-

9. Duties of local authority.—Every local authority shall—

(a) provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school;

(b) ensure availability of a neighbourhood school as specified in section 6;

(c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

(d) maintain records of children up to the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed;

(e) ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction;

(f) provide infrastructure including school building, teaching staff and learning material;

(g) provide special training facility specified in section 4;

(h) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;

(i) ensure timely prescribing of curriculum and courses of study for elementary education;

(j) provide training facility for teachers;

(k) ensure admission of children of migrant families;

(l) monitor functioning of schools within its jurisdiction; and

(m) decide the academic calendar.

18. 'Local authority' is defined in **Section 2 (h)** and it includes such authority or body having administrative control over the school or empowered by or under any law time being in force to function as a local authority in any city, town or village. District Education Officer and District Project Coordinator under District Education Center are part of local authority to perform duties as prescribed in Section 9.

19. Not only this, Section 10 of RTE Act cast upon duties over parents and guardian to admit or caused to be admitted his or her child to an elementary education in the neighbourhood school.

20. Similarly, **The Right of Children to Free and Compulsory Education Rules, 2010** (hereinafter shall be referred to as 'the RTE Rules') were framed in exercise of powers conferred by Section 38 of RTE Act. Said rules again cast certain duties over appropriate government or the local authority. Maintenance of records of children by the local authority is one such duty prescribed. Rule 10 mandates in following manner :-

10. Maintenance of records of children by the local authority.-

(1) The local authority shall maintain a record of all children in its jurisdiction, through a household survey, from their birth till they attain the age of 14 years.

(2) The record, referred to in sub-rule (1), shall be updated annually.

(3) The record, referred to in the said sub-rule, shall be maintained transparently, in the public domain, and used for the purposes of clause (e) of section 9.

(4) The record, referred to in the said sub-rule shall, in respect of every child, include :-

(a) name, sex, date of birth, place of birth;

(b) name, address, occupation of parent or guardian;

(c) pre-primary school/anganwadi centre that the child attends (upto age 6);

(d) elementary school where the child is admitted;

(e) present address of the child;

(f) class in which the child is studying (for children between the age of 6 to 14), and if education is discontinued in the territorial jurisdiction of the local authority, the cause of such discontinuance;

(g) whether the child belongs to the weaker section;

(h) whether the child belongs to a disadvantaged group;

(i) whether the child requires special facilities or residential facilities on account of (i) migration and sparse population; (ii) age appropriate admission; and (iii) disability.

(5) The local authority shall ensure that the names of children enrolled in the schools are publicly displayed in each school.

21. Perusal of Rule 10 (4) (b) of RTE Rules further stipulates that records must include name, address, occupation of parent or guardian.

22. Therefore, it is abundantly clear that RTE Act is an statute which governs elementary education for a child between 6 to 14 years of age and it is the duty of the State to ensure the admission of the child and maintenance of records by the School, besides other functions discussed above. Therefore, School is also governed by certain provisions under RTE Act, 2009 to act in a particular manner. Not only the School, but the State and its instrumentalities in the nature of appropriate government/local authority are also duty bound to ensure the functions to be performed as per the mandate of RTE Act. It includes maintenance of records.

23. Here in present case, petitioner approached the respondent No.2 - District Education Officer and No.3 - District Project Coordinator and realising their duties, both the authorities issued letters on 08.11.2024 and 11.12.2024 respectively to the school to do the needful regarding inclusion of name of petitioner as father.

24. Petitioner also sought relief against respondents No.2 and 3, who are government officers and are included under Article 12 of the Constitution of India (in the definition of “State”) and it is their duty under RTE Act to act in a particular manner. Although they wrote letters but they failed to cause incorporation of name of the petitioner in school record as father. Petitioner sought directions to respondents No.2 & 3 also, in relief clause. Similarly, school (respondents No.4 and 5) were also obliged under the RTE Act to maintain record of child in proper manner but failed to do so. Therefore, public law remedy is available in present case, writ petition against them is maintainable.

25. Hon'ble Apex Court in the case of **Ajay Hasia Vs. Khalid Mujib (1981) 1 SCC 722**, **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust Vs. V.R.Rudani (1989) 2 SCC 691**, **Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology and Others (2002) 5 SCC 111** and in **Federal Bank Ltd. Vs. Sagar Thomas and Others (2003) 10 SCC 733** discussed the scope of maintainability of Writ Petition under Article 226 of the Constitution of India. In the case of **Federal Bank (Supra)** following discussion is worth reiteration :-

18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a

person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.

26. So far as judgment in the case of **St.Mary's Education Society (supra)** as relied upon by the learned Writ Court is concerned, the facts of said case were bit different vis-à-vis instant case. In that case, an employee of an unaided institute preferred writ petition against his termination and therefore in that fact situation, Hon'ble Apex Court held that individual wrongs or breach of mutual contracts without having any public element as its integral part can not be rectified through a writ petition under Article 226. Relevant discussion is as under :-

43. In the background of the above legal position, it can be safely concluded that power of judicial review under Article 226 of the Constitution of India can be exercised by the High Court even if the body against which an action is sought is not State or an authority or an Instrumentality of the State but there must be a public element in the action complained of.

54. Thus, the aforesaid order passed by this Court makes it very clear that in a case of retirement and in case of termination, no public law element is involved. This Court has held that a writ under Article 226 of the Constitution against a private educational institution shall be maintainable only if a public law element is involved and if there is no public law element is involved, no writ lies.

27. Final conclusions were recorded in para 75 of the said judgment and same are as under :-

75. We may sum up our final conclusions as under:—

75.1 An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person

must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

75.2 Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element.

75.3 It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a Constitutional Court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a “public function” or “public duty” be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

75.4 Even if it be perceived that imparting education by private unaided the school is a public duty within the expanded

expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether “A” or “B” is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered by the court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

75.5 From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.

28. Therefore, it appears that **St. Mary's Education Society (supra)** clarifies the position. Since public element in the action complained of exists and public law element is involved in present case, therefore, in fact, **St. Mary's Education Society (supra)** supports the cause of the petitioner regarding maintainability of the petition. Therefore, according to this Court, instant Writ Petition under Article 226 of the Constitution was maintainable. Learned Writ Court erred in glossing over this legal position.

29. Even otherwise, petitioner can not be rendered remediless. If petitioner wants incorporation of his name in school record and school is bound to function in a particular manner as per Statute (RTE Act), then it is the duty of the respondents No.2 and 3 to ensure compliance. If any authority or school

does not comply the provisions, then only effective remedy is to file writ petition under Article 226 of the Constitution of India. No other effective remedy is available with the petitioner.

30. So far as discussion on merits is concerned, from the discussion made above, it is abundantly clear that it is the duty of the District Education Officer (respondent No.2)/District Project Coordinator (respondent No.3) as well as school (respondents No.4 and 5) to maintain record in proper manner and as per Sections 8 and 9 of the RTE Act, and Rules 6,9 and 10 of RTE Rules, the record must include name, address and occupation of parent or guardian. Here, admittedly petitioner is the biological father of his son (Om V. Kalmady) born out of the wedlock with Anshudeep Maheshwari (respondent No.6 herein), therefore, paternity is not doubtful.

31. Welfare of the child is of paramount consideration. Apex Court as well as this Court has reiterated this spirit time and again. Therefore, it is in the welfare of the child if he carries his identity in correct and proper manner. His identity owes the name of father as well as mother. This would develop him as a healthy child. Therefore, from this vantage point also inclusion of name of the petitioner in school record of his son is required.

32. Apex Court in the case of **Jigya yadav Vs. CBSE and others - (2021) 7 SCC 535** while dealing with the change of name of a student held that writ petition is maintainable against CBSE and discussed regarding identity of an individual based upon his outer characteristics and discussed the significance

of the acquired identity in the form of name. Apex Court held in the following manner :-

125. Identity, therefore, is an amalgam of various internal and external including acquired characteristics of an individual and name can be regarded as one of the foremost indicators of identity. And therefore, an individual must be in complete control of her name and law must enable her to retain as well as to exercise such control freely “for all times”. Such control would inevitably include the aspiration of an individual to be recognized by a different name for a just cause. Article 19 (1)(a) of the Constitution provides for a guaranteed right to freedom of speech and expression. In light of *Navtej Singh Johar (2019) SCC (Cri) 1* this freedom would include the freedom to lawfully express one’s identity in the manner of their liking. In other words, expression of identity is a protected element of freedom of expression under the Constitution.

33. Although that was a case where students (as petitioner) sought change of name/surname/date of birth/name of their parents, but Apex Court held that change of name of a student or their parents deserves consideration because it forms the identity of an individual and here incorporation of name of father would make the identity complete.

34. One more aspect deserves consideration is that school record would ultimately form the basis of record of other public documents like Passport, Aadhar Card, Pan Card, Bank Account etc. and parental rights of a biological father can not be undermined at the alter of dispute between the couple. A child should not suffer the dispute, either emotionally or educationally/ socially. Therefore, record at the inception deserves correction by way of incorporation of name of both parents. Here case is of father. Therefore,

incorporation of name of father is backed by statute. Learned Writ Court glossed over all these aspects and committed an error. Thus, order passed by the learned Writ Court deserves to be set aside.

35. Grievance and apprehension is raised by the respondent No.6 that there has been a history of verbal and physical abuse not only to the mother (respondent No.6) of Master Om V. Kalmady, but also to other relatives and friends. Therefore, as per respondent No.6 the petitioner ought to be prohibited from directly communicating to the school staff or to the school teachers or to the Principal. Similarly, restrictions be imposed for not visiting the child at school or issuing instructions to the school authorities as well as no details be disclosed about the marital dispute of appellant and respondent No.6 to any of the school staff or any person related thereto including sharing of photographs or any kind of communication. It is further apprehended by respondent No.6 that school app has a feature for sending messages to staff. Appellant be prohibited from communicating or sending instructions.

36. Considering the sensitivity of respondent No.6, which is reflected from the written synopsis filed by the respondent No.6 and argued by her counsel, same deserves to be considered in right earnest.

37. Resultantly, Appeal stands allowed, Impugned order passed by the learned Writ Court is set aside and the directions are issued in following manner :-

(i) Respondents No.4 and 5/school shall cause necessary correction in the

school record and incorporate the name of the petitioner as father of Om V. Kalmady (student of Class II).

(ii) Respondent No.2 and 3 shall ensure correction of records by school as per RTE Act.

(iii) Petitioner shall have limited access over the progress of his son to the extent that progress of his son shall be communicated to the petitioner at school app but petitioner shall not be permitted to engage with school authorities/staff in any manner on his own.

(iv) Any detrimental act by petitioner which undermines welfare of the child shall not be permitted by the respondents No.2 to 5.

38. Appeal stands allowed and disposed of accordingly.

(ANAND PATHAK)
JUDGE

(ANIL VERMA)
JUDGE

SP